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PACIFIC  TELESIS  
Group-Washington

CONFIDENTIAL

July 12, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

Re: *GN Docket No. 94-33 - Further Forbearance From Title II Regulation For Certain Types of Commercial Mobile Radio Service Providers*

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of their "Reply Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Further Forbearance from Title II  
Regulation for Certain Types of  
Commercial Mobile Radio Service  
Providers

GN Docket No. 94-33

REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL

Pacific Bell and Nevada Bell hereby respond to  
selected issues raised in the comments in the above-captioned  
proceeding.

I. THE COMMISSION SHOULD REJECT ARGUMENTS TO APPLY ITS  
FORBEARANCE DECISIONS SELECTIVELY.

Several of the commenters support forbearance of Title  
II provisions based on the size of the commercial mobile service  
providers. For example, Nextel and the American Mobile  
Telecommunications Association urge the Commission to forbear  
from applying all but the statutorily-mandated Title II

provision to "small" providers.<sup>1</sup> Both define small as those providers that serve fewer than 5,000 subscribers nationwide.<sup>2</sup> Nextel and the American Mobile Telecommunications Association also recommend that the Commission consider market dominance in determining appropriate levels of forbearance.<sup>3</sup> We strongly disagree.

As we explained in our comments making forbearance distinctions based on a provider's size or customer base would be arbitrary and would not meet Congress's objective to ensure that similar mobile services are subject to consistent regulatory classification.<sup>4</sup> Moreover, this approach would discourage small providers from expanding since increased size would subject them to more regulation.<sup>5</sup> Finally, it would create an administrative nightmare for the Commission.<sup>6</sup>

Likewise, forbearance based on market share and/or dominance or non-dominance is inappropriate. As we explained in

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<sup>1</sup> Nextel, p. n-8; American Mobile Telecommunications Association, pp. 7-10.

<sup>2</sup> Nextel, p. 8; American Mobile Telecommunications Association, p. 8.

<sup>3</sup> Nextel, p. 3; American Mobile Telecommunications Association pp. 5-7.

<sup>4</sup> Pacific Bell and Nevada Bell, pp. 3-7.

<sup>5</sup> Id. at pp. 5-6.

<sup>6</sup> Id. at p. 7.

our comments, emergent competition (with expanding output, entry and capacity) should be central to any forbearance analysis.<sup>7</sup>

An analysis of output, capacity and entry in the area of commercial mobile services demonstrates that the market is changing. Customers will have more and more choices over the next few years. It is critical that the Commission not engage in selective forbearance that creates distortions in the market. The Commission should take this opportunity to regulate all CMRS providers on the same streamlined basis.

## II. THE COMMISSION SHOULD FORBEAR FROM APPLYING SECTION 226 OF THE COMMUNICATIONS ACT TO CMRS PROVIDERS

Many of the commenters object to the application of Section 226, also known as the Telephone Operator Consumer Services Improvement Act to CMRS.<sup>8</sup> Southwestern Bell provides a detailed discussion of the difficulties and burdens associated with application of Section 226, to CMRS.<sup>9</sup> Given the lack of any evidence of the type of abuse that precipitated this legislation, we agree that the Commission should forbear from

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<sup>7</sup> Id. at pp. 8-13.

<sup>8</sup> See e.g., AllTel, p. 3; BellAtlantic, p. 8; GTE, pp. 5-6; McCaw, pp. 4-5; Nextel, pp. 15-16.

<sup>9</sup> Southwestern Bell, pp. 10-16.

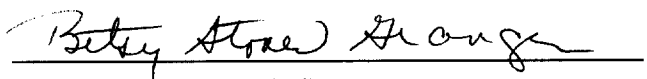
the application of Section 226 to all CMRS providers at this time. If problems arise, as the CMRS market develops the Commission can revisit this issue. It is inappropriate to impose a regulatory burden on CMRS providers now in absence of any need for the regulation.

III. CONCLUSION.

Pacific Bell and Nevada Bell respectfully request that the Commission reject arguments to apply its forbearance authority selectively and that it forbear from applying Section 226 to all CMRS providers at this time.

Respectfully submitted,

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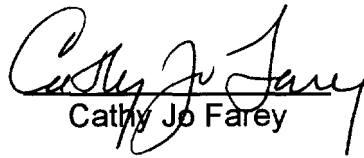
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Their Attorneys

Date: July 12, 1994

## CERTIFICATE OF SERVICE

I, Cathy Jo Farey, hereby certify that a copy of the foregoing "REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL" in GN Dkt. No. 94-33 was mailed, postage prepaid, this 12th day of July, 1994, to the parties on the attached service list.

  
Cathy Jo Farey

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